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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,579	02/26/2004	Douglas A. Crawford	2076/US/2	7948

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DORSEY & WHITNEY, LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
370 SEVENTEENTH STREET  
SUITE 4700  
DENVER, CO 80202-5647

EXAMINER
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RICHMAN, GLENN E

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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12/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/789,579

**Applicant(s)**

CRAWFORD ET AL.

**Examiner**

Glenn Richman

**Art Unit**

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-14, 16 and 18 is/are rejected.
- 7) ☒ Claim(s) 4-6, 15, 17 and 19-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u>                                    | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date  
:12/22/04,6/12/06,9/18/06,3/16/07,9/5/07,10/31/07.

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of claims 1-22 in the reply filed on 10/02/07 is acknowledged.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 10-14, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Clem.

Clem discloses at least one treadle having at least one tread fig.2; a master control unit 28; a first sensor, in communication with the master control unit, which generates a first signal indicative of an effective tread speed for the apparatus 78; and a resistive element operably coupled with the at least one treadle , the resistive element including at least one resistance level "In accordance with one aspect of the invention, the resistance levels of the resistance mechanisms 13, 15 of the fitness device 32 can be varied with respect to one another according to the heart rate of the user."

As for claims 2, 3, Clem further discloses a data structure containing data indicative of the amount of energy expended for a given resistance level "In an exemplary embodiment, the user 34 enters the goal of losing 20 pounds, and that goal

is sent to the automated remote location 12. The automated remote location 12, using the identifying user information, the calorie information entered by the user, and the goal, formulates a workout regimen unique to that user. During that and each subsequent workout session, the metabolism and physiology of the user 34 is monitored by the fitness device, and that information is sent to the remote location 12. The difficulty and intensity of the workout are varied within the workout, by causing variations in the fitness device 32, to account for changes in the user's physiology, as monitored by the fitness device 32, in light of the user's goals. Further, the user's metabolism and physiology during previous workouts and responses to variations in previous workouts are compared to the current metabolism and physiology, and responses to current variations, and further variations to the fitness device 32 may be made based on these comparisons. At the close of each workout, the remote location 12 may issue a status update, such as the metabolic rate of the user 34, the user's physiology during the workout, the number of calories burnt during the workout, and time estimations as to improvement of stamina, proximity to weight loss, and/or approximate time to reach the goal at the current status. All such updates and variations are based on the comparison between data received, and correlation between the goal of losing 20 pounds, and the actual progress toward the loss of 20 pounds. These same updates may be given during the exercise, rather than after, and may correspond directly to adjustments in the exercise equipment.”, the master control unit accesses the data structure and determines the amount of energy expended based upon at least one of the first signal and at least one resistance level “ Device information such as speed,

incline and suspension can also be communicated by the user or automatically by way of the internet system 19 . Any other information useful for interaction between the user location 34 and the web site 12 can also be applied to the internet system 19. The user information and the device information can be used by the web site 12, as well as by the controller 28, to calculate, for example, calorie information. Calorie information calculated in this manner can be used to provide control signals for controlling the fitness device 32 according to the calorie information, both in a current exercise session and in a future one. Information within the fitness system 10 can also be interactively communicated to and from third party applications 14. An internet browser 17 can be coupled to the network connection device 18. The internet browser 17 permits the user of fitness system 10 to browse the internet system 19 both during and between exercise sessions.”

As for claims 10-14, 16, 18, Clem further discloses 10. (Previously Presented)

The exercise apparatus of claim 1 further comprising a tread control unit, in communication with the master control unit, which controls the rotation of the at least one treadle on the apparatus col. 6, lines 56 - et seq., the master control unit controls the operation of the tread control unit col. 6, lines 56 - et seq., the master control unit controls the operation of the tread control unit based at least upon the first signal col. 6, lines 56 - et seq., the tread control unit further comprises at least one of a D.C. motor and an A.C. motor col. 6, lines 8 - et seq., the apparatus may be configured such that striding, stepping or combined striding and stepping motions are facilitated by the apparatus fig. 2, wherein at least one of the desired effective tread speed and the

desired resistance level are specified via a user interface col. 3, lines 66 – et seq, the apparatus may be configured to operate as at least one of a treadmill, a stepper and a combined treadmill and stepper fig. 2,

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clem in view of Gureghian.

Clem does not disclose the resistive element imparts a first force upon the treadle in a substantially vertical direction.

Gureghian disclose a resistive element imparts a first force upon the treadle in a substantially vertical direction col. 5, lines 38 – et seq.

It would have been obvious to use Gureghian's resistive element imparting a force, with Clem's treadmill, as it is well known as taught by Gureghian, to have a resistive force imparting a resistance in the vertical direction, for providing an exercise means to a user.

Gureghian discloses the force imparted by the resistive element counteracts at least a portion if not all of a second force imparted upon the tread by an exerciser col. 5, lines 38 – et seq.

Clem discloses the master control unit controls the effective tread speed for each of the at least one treads in a substantially horizontal direction "Since the speed and grade of the fitness device 32 is determined by the controller 28, the controller 28 normally has all speed and grade information required to the fitness control device 32. However, it is preferable to include a speed sensor for detecting the actual speed of the fitness device 32 and an incline sensor for determining the actual grade. Sensors suitable for this purpose are well known to those skilled in the art. For example, a speed sensor 78 can be a conventional Hall effect type sensor adapted to provide a value to the controller 28 that indicates the revolutions per minute of the drive roller 21. The controller 28 can then convert the value received from speed sensor 78 to miles per hour. The incline sensor 80 can be any conventional sensor suitable for the purpose."

***Allowable Subject Matter***

Claims 4-6, 15, 17, 19-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Glenn Richman  
Primary Examiner  
Art Unit 3764